

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

May 16, 2013

A meeting of the Board of Environmental Protection was held on Thursday, May 16, 2013 at the Civic Center, 76 Community Drive, Augusta, Maine. Robert Foley, Chair, called the meeting to order at 9:00 am with the following individuals:

Board: Present: Alvin Ahlers, Thomas Eastler, Robert Foley, Richard Gould, and Susan M. Lessard
 Absent: Elizabeth Ehrenfeld and M. Wing Goodale

Others: Patricia Aho, DEP Commissioner
 Peggy Bensinger, Assistant Attorney General
 Cynthia S. Bertocci, BEP Executive Analyst
 Ruth Ann Burke, BEP Clerk and Administrative Assistant

Draft Pending Board Approval

I. Departmental**A. Commissioner's Comments:**

- Governor's Awards for Environmental Excellence will be held next Wednesday at Mid-State Machine Products in Winslow. Commissioner Aho noted that Board members received invitations and are encouraged to attend.
- Suzanne Miller joined the Department on May 6th. She is the new Eastern Maine Regional Office Director in Bangor. She may be able to attend the Board's next meeting to meet members. She has a long career in environmental audit work and sustainability.
- Wind Power Up-date: The Department has deemed complete and accepted for processing an application for a project in the Bingham area for 62 turbines. The applicant is Blue Sky West, LLC (First Wind). There are now four windpower applications pending with the Department, and another five projects are in some form of legal challenge.

B. Comments from the BEP Chair: Mr. Foley stated that he has issued a Procedural Order governing the Board's consideration of the Saddleback Ridge Wind Power Project. The parties and Board members have been provided with copies of the order, and the information has been posted on the Board's website.**C. Executive Analyst Comments:** None**D. Board Calendar:** Reviewed. The June 13, 2013 meeting will be at the Civic Center.**E. Departmental Orders / Applications Accepted for Processing:** Reviewed**F. Executive Session:** None**II. Consent Agenda Items:****1. BEP Meeting Minutes:** May 2, 2013 (approval)

The Board voted (5-0-2-0) on a motion to approve the minutes for May 2, 2013 as presented.

The vote was taken pursuant to 38 M.R.S. § 341-D.

Board members Alvin Ahlers, Thomas Eastler, Robert Foley, Richard Gould, and Susan Lessard voted to support the motion. Board members Elizabeth Ehrenfeld and M. Wing Goodale were absent.

III. Regular Agenda Items:**1. Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters / Amendments (proposed for adoption)**

Staff: Cynthia Bertocci, Board Executive Analyst

Chapter 2 is a routine technical rule that governs proceedings before both the Board and the Commissioner. The Board and Commissioner held a joint public hearing on the proposed amendments at the Board's January 3, 2013 meeting. The comment period closed on January 22, 2013.

At the meeting staff reviewed the changes to the rule made in response to comments. Staff also presented an additional amendment to ensure consistency within the rule regarding the schedule for the Commissioner to respond to a petition. Specifically, the Board and the Commissioner were asked to further amend the rule as follows:

Section 25(B): "...No later than 45 21 days following the ~~filing of receipt of the licensee's response to a petition to revoke or suspend a license~~, the Commissioner shall dismiss the petition or initiate proceedings..."

Section 26(B): "...No later than 45 21 days following the ~~filing of receipt of the licensee's response to a petition to modify a license or prescribe corrective action on a license~~, the Commissioner shall dismiss the petition or recommend to the Board that it initiate proceedings..."

Following discussion, a motion was made by Board member Lessard and seconded by Board member Eastler to adopt Chapter 2 as amended, including the additional amendments to Sections 25(B) and 26(B). The Board's motion was then tabled to allow the Commissioner to state the manner in which she proposed to act on the amendments to Chapter 2.

Commissioner Aho stated that she proposed to adopt the amendments to Chapter 2 as presented, including the additional amendments to Sections 25(B) and 26(B). The Commissioner then tabled her decision to allow for public comment pursuant to 38 M.R.S. § 341-H(3)(C).

Two persons commented.

- Ms. McBrady, an attorney with Preti Flaherty, reiterated her request that the Department adopt rules governing appeals of enforcement orders issued by the Commissioner. The comment was noted.
- Ms. McBrady and Mr. Doyle, an attorney with Pierce Atwood, both expressed concerns about the provision in Section 24 of the rule which provides that any person who filed written comment on an application may respond to an appeal of that licensing decision. Commissioner Aho and some Board members noted that the proposed language may be too broad and that it may be appropriate to limit respondents to persons with a direct and substantial interest in the project. After considering amending the language and re-opening the record for additional comment, both the Commissioner and the Board indicated that it would be best to examine this issue in a separate rulemaking.

The Board then took up its motion and voted (5-0-2-0) to adopt the amendments to Chapter 2 as presented by staff. The vote was taken pursuant to 38 M.R.S. § 341-H(1).

Board members Alvin Ahlers, Thomas Eastler, Robert Foley, Richard Gould and Susan Lessard voted to support the motion. Board members Elizabeth Ehrenfeld and M. Wing Goodale were absent.

Commissioner Aho then stated that she adopts the amendments to Chapter 2 as presented by staff pursuant to 38 M.R.S. § 341-H(2).

(The meeting adjourned at approximately 10:45 a.m.)
